

91-480

Supreme Court, U.S.

FILED

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Case No.: _____

In The Supreme Court
of
The United States

Term: 1991

LEONARD C. HECKMAN, pro se

Petitioner-Appellant

v.

MICHAEL J. McCULLION, REGISTRAR,
OHIO BUREAU OF MOTOR VEHICLES

Respondent-Appellee

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF OHIO, TRUMBULL COUNTY

PETITION FOR WRIT OF CERTIORARI

Leonard C. Heckman, Pro Se
Petitioner
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QUESTIONS PRESENTED

1. Under the due process clause of the fifth and fourteenth amendments, is a commercial truck driver entitled to a hearing prior to the revocation of his driver's license when the revocation is based on a revocation in another state because of outstanding judgments?

2. Does a notice containing merely an address and a phone number to contact to inquire into regaining a driver's license comply with procedural due process of notice and opportunity of the hearing?

3. When reversing a lower court's decision for lack of subject matter jurisdiction, can a court of appeals also reinstate an administrative agency's decision which is void under state law and violative of due process under the fifth and fourteenth amendments?

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UNOFFICIAL REPORTS OF OPINIONS
DELIVERED IN THE CASE

Ohio State Supreme Court Case No. 91-338.

Court of Appeals for the
Eleventh District of Ohio
(Trumbull County) Case No. 89-T-4328.

Niles Municipal Court,
Niles, Ohio Case No. 88 H 1038

Ohio Bureau of
Motor Vehicles dated September 22, 1987

STATEMENT OF GROUNDS
FOR JURISDICTION

The date of the entry of judgment of the Ohio State Supreme Court sought to be reviewed is May 1, 1991.

The constitutional provision involved in this case the fourteenth amendment to the Constitution of the United States, to wit:

AMENDMENT XIV, Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner, Leonard C. Heckman (Petitioner), is a commercial truck driver. On or about August 20, 1987, Respondent, Ohio Bureau of Motor Vehicles (OBMV), sent Petitioner a letter informing him that his Ohio driver's license would be cancelled if he did not provide within thirty (30) days OBMV with a letter of clearance from Pennsylvania. OBMV demanded the letter of clearance because Petitioner's Pennsylvania driver's license was shown as suspended due to unsatisfied judgments in Pennsylvania. The letter did not afford Petitioner a hearing, nor did it inform him that he had a right to request a hearing.

On or about September 22, 1987, OBMV sent Petitioner a notice that his driving privileges and driver's license had been cancelled indefinitely effective September 22, 1987. The notice did not state that Petitioner was entitled to a hearing, nor did it state that he was entitled to request a hearing. The

notice merely stated that the Petitioner must contact OBMV in order to regain his driving privileges.

Petitioner filed a petition in Municipal Court, Niles, Ohio with allegations that included that the revocation of his Ohio driver's license violated the fifth and fourteenth amendments to the Constitution of the United States. The municipal court granted the petition and ordered OBMV to reinstate Petitioner's Ohio driver's license. After the appeal time had expired, OBMV filed a motion to dismiss, which was denied. Approximately six (6) months later, OBMV filed a motion to vacate which asserted that Petitioner failed to exhaust his administrative remedies. The motion to vacate was denied by the municipal court, and OBMV appealed to the Court of Appeals for the Eleventh District of Ohio (Trumbull County). The court of appeals held that the municipal court lacked subject matter jurisdiction, and not only reversed the deci-

sion of the municipal court, but also reinstated the OBMV revocation of Petitioner's driver's license. A Notice of Appeal to the Ohio State Supreme Court was timely filed. The Ohio State Supreme Court declined jurisdiction and this case has now been timely filed before this Court.

ARGUMENT

The court of appeals erred by reinstating the OBMV revocation¹ and not holding the revocation was void ab initio under Ohio statutes and the fifth and fourteenth amendments of the Constitution of the United States.

A HEARING IS REQUIRED UNDER THE
FOURTEENTH AMENDMENT PRIOR TO THE
REVOCATION OF A TRUCK DRIVER'S
COMMERCIAL DRIVER'S WHEN THE
REVOCATION IS BASED ON A REVOCATION
IN ANOTHER JURISDICTION.

¹The terms "revocation," "cancellation," and "suspension" have all been used to describe the attempted OBMV action. To eliminate confusion, the term "revocation" is used herein.

The Court has specifically held that a driver's license may not be revoked without procedural due process. See, e.g., Bell v. Burson, 402 U.S. 535 (1971); See also, Dixon v. Love, 431 U.S. 105 (1977). The issue is what procedural process is due. What may be due process in one set of circumstances, may not be due process in another. Bell, 402 U.S. at 541.

In Bell, the Court reviewed Georgia's Motor Vehicle Safety Responsibility Act, which provided that the driver's license of an uninsured motorist involved in an accident will be automatically suspended unless security is posted in the amount of the damages claimed by an aggrieved party and which excluded from a pre-suspension hearing any consideration of fault or responsibility for the action. Bell, 402 U.S. 535. The Court held that the exclusion from pre-suspension hearing of any consideration of fault or liability for the accident violated procedural due process.

Id. The Court stated:

"it is fundamental that except in emergency situations..., due process requires that when a State seeks to terminate an interest such as that here involved [a driver's license], it must afford 'notice and opportunity for hearing appropriate to the nature of the case' before the termination becomes effective."

Id., at 543 (emphasis in the original).

The Court has set forth a three prong test to determine whether a pre-revocation hearing must be afforded:

"[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."

Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

In Eldridge, the court held that the termination of Social Security disability benefits required a prior hearing. See id.

In Dixon, the Court held that under the Eldridge test, a pre-suspension hearing was not necessary based on an automatic suspension of the license of a motorist who had been repeatedly convicted of traffic offenses. See Dixon, 431 U.S. 105. However, Dixon may be distinguished from this case. In Dixon, the Court held that a driver's license may not be so vital and essential as social insurance payments on which the recipient may depend for his very subsistence. Id., at 114. The Court further held that the Illinois statute included special hardship provisions for commercial licensees most likely to be effected by deprivation of driving privileges. Id. In this case, as in Eldridge, the property interest deprived was depended upon for subsistence. As a truck driver, the very subsistence of Petitioner and his family required his driver's license. Furthermore, no special provisions for hardship were afforded in this case. As with the social insurance benefits in

Eldridge, Petitioners driver's license was required for his very subsistence.

As for the second prong of the Eldridge test, in this case there is a great risk of erroneous deprivation in the absence of a prior hearing. A person may be granted and hold an Ohio driver's license if the revocation in another jurisdiction would not cause a revocation in Ohio. O.R.C. §4507.08(E). As in the necessity for the prior determination of liability in Bell, this case requires a prior determination of whether the basis for the revocation in another state would cause revocation in Ohio. See Bell, 402 U.S. 535. Without this prior determination, there is a great risk of erroneous deprivation. Therefore, the second prong of the test supports the requirement of a predetermination hearing.

As for the third and final prong of the Eldridge test, administrative efficiency would not be impeded by the availability of a pre-

determination hearing. This case may be distinguished from Dixon which held that providing a predetermination hearing would encourage drivers to request full hearings and delay the effectiveness of suspensions. Dixon, 431 U.S. at 115. Moreover, in Dixon, the State had important public interest in the safety of roads and highways and in the prompt removal of safety hazards, and the statute was designed to keep off the roads drivers unwilling or unable to respect traffic rules and safety. Id. The great interest in public safety in Dixon, fully distinguished it from Bell. Id.; See Bell, 402 U.S. 535. In Bell, the Court held that the only public interest was security from a creditor resulting from the accident. Id. In this case, the Pennsylvania revocation was based on unsatisfied judgments. Accordingly, this case is analogous to Bell, and fully distinguished from Dixon. Therefore, the third prong of the Eldridge test supports a predetermination

hearing.

Therefore, under the Eldridge test, OBMV was required to provide Petitioner with a hearing prior to revoking his Ohio driver's license. Petitioner had a great interest in his driving privileges because he relied on them as a commercial truck driver and for his very subsistence. There is a great risk of erroneous deprivation without a predetermination of whether the revocation in the other state would cause a revocation in Ohio. And, substantial public interest in administrative efficiency would not be impeded by the availability of a predetermination hearing, nor does the State have a substantial public safety interest requiring the dispensing of a predetermination hearing.

PROPER NOTICE MUST EXPRESSLY INCLUDE
NOTICE OF THE RIGHT TO A HEARING OR
THE RIGHT TO REQUEST A HEARING.

Even if OBMV was not required to provide Petitioner with a pre-suspension hearing,

Petitioner did not receive proper notice of a post-suspension hearing required by the fifth and fourteenth amendments to the United States Constitution.

OBMV not only failed to notify Petitioner of a post-revocation hearing, but also failed to notify Petitioner that he had a right to request such a hearing.

The post-revocation notice OBMV gave Petitioner, which merely informed Petitioner to contact OBMV in order to regain his driving privileges, did not comply with procedural due process required under the fifth and fourteenth amendments of the United States Constitution. The notice must be of such a nature as to reasonably convey the required information. See Mulane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950). To convey notice, not only the manner of serving, but also the content must be sufficient. OBMV never notified Petitioner of his right to a hearing, nor even the right to request a

hearing. The notice merely provided an address and telephone number for him to contact. Clearly such notice does not pass constitutional muster of notice for the opportunity of a hearing.

Therefore, the OBMV revocation of Petitioner's Ohio driver's license is violative of the fifth and fourteenth amendments.

A COURT OF APPEALS CAN NOT REINSTATE
A VOID AGENCY ADJUDICATION WHICH
VIOLATES DUE PROCESS WHEN THE COURT
OF APPEALS REVERSES A LOWER COURT
DECISION AS VOID BECAUSE OF LACK OF
SUBJECT MATTER JURISDICTION.

The court of appeals held not only that the municipal court's decision was void for lack of subject matter jurisdiction, but also reinstated the OBMV decision. Thus, the court of appeals went too far, not only because the OBMV decision was unconstitutional as discussed supra, but also because the OBMV decision was itself void under the Ohio

statutes.

The revocation of an Ohio driver's license is an Adjudication Order. O.R.C. §119.01(D). To revoke a driver's license that was already issued, OBMV was required to give proper prior notice and opportunity for a hearing. Id.

O.R.C. §119.06 states, in pertinent part, as follows:

No adjudication order shall be valid unless an opportunity for a hearing is afforded in accordance with Sections 119.01 to 119.13 of the Revised Code. Such opportunity for a hearing shall be given before making the adjudication order except in those situations where this Section provides otherwise.

O.R.C. §119.06 (emphasis added). There are no exceptions to O.R.C. §119.06 applicable to this case. Therefore, OBMV was required to give Petitioner proper prior notice of such hearing. Id.; see, O.R.C. §119.07.


OBMV failed to give Petitioner proper prior notice of a hearing. O.R.C. §119.07 states, in pertinent part, as follows:

. . . in all cases in which Section 119.06 of the Revised Code requires an agency to afford an opportunity for a hearing prior to the issuance of an order, the agency shall give notice to the party informing him of his right to a hearing. Such notice shall be given by registered mail, return receipt requested, and shall include the charges or other reasons for such proposed action, the law or rule directly involved, and a statement informing the party that he is entitled to a hearing if he requests it within thirty (30) days of the time of mailing the notice.

O.R.C. §119.07. Therefore, OBMV's decision was not only violated due process, but was also void under Ohio statutes. The court of appeals' reinstatement of OBMV's decision must be reversed.

Wherefore, Petitioner petitions for a Writ of Certiorari to the Supreme Court of the State of Ohio.

Respectfully submitted,


Leonard C. Heckman, pro se
1163 Swallow Street, S.W.
Warren, Ohio 44485



THE SUPREME COURT OF OHIO

LEONARD C.	)	1991 TERM
HECKMAN,)	
	)	To Wit: May 1, 1991
Appellant,)	
	)	Case No. 91-338
-vs-)	
)	
MICHAEL J.	)	<u>ENTRY</u>
McCULLION,)	
REGISTRAR,)	
STATE OF OHIO,)	
BUREAU OF MOTOR)	
VEHICLES,)	
)	
Appellee.)	

Upon consideration of the motion for an order directing the Court of Appeals for Trumbull County to certify its record, and the claimed appeal as of right from said court, it is ordered by the Court that said motion is overruled and the appeal is dismissed sua sponte for the reason that no substantial constitutional question exists therein.

COSTS:

Motion Fee, \$40.00, paid by James A. Tadla
(Court of Appeals No. 89T4328)

THOMAS J. MOYER
Chief Justice

THE SUPREME COURT OF OHIO

LEONARD C.	)	1991 TERM
HECKMAN,)	
	)	To Wit: March 28, 1991
Appellant,)	
	)	Case No. 91-338
-vs-)	
)	
MICHAEL J.	)	<u>ENTRY</u>
McCULLION,)	
REGISTRAR,)	
STATE OF OHIO,)	
BUREAU OF MOTOR)	
VEHICLES,)	
)	
Appellee.)	

The cause is pending before the Court on the filing of a motion for an order directing the Court of Appeals for Trumbull County to certify its record and as a claimed appeal as of right from said court. Upon consideration of appellant's motion to stay judgment pending appeal.

IT IS ORDERED by the Court that said stay be, and the same is hereby, denied.

THOMAS J. MOYER
Chief Justice

COURT OF APPEALS
ELEVENTH DISTRICT
TRUMBULL COUNTY, OHIO

LEONARD C. HECKMAN,

J U D G E S

P l a i n t i f f -
Appellee,

-vs-

MICHAEL J.
McCULLION,
REGISTRAR, OHIO
BUREAU OF MOTOR
VEHICLES,

D e f e n d a n t -
Appellant.

HON. JUDITH A.
CHRISTLEY, P.J.,
HON. EDWARD J.
MAHONEY, J., Ret.,
Ninth Appellate
District sitting by
assignment
HON. WILLIAM R.
BAIRD, J.,
Ninth Appellate
District sitting by
assignment.

CASE NO. 89 T 4328

CHARACTER OF
PROCEEDINGS:

O P I N I O N

Civil Appeal from
Niles Municipal
Court
Case No. 88 H 1038

JUDGMENT: Reversed.

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(for Plaintiff-
Appellee)

A N T H O N Y J .
CELEBREEZE, JR.
ATTORNEY GENERAL

CHERYL D. MINSTERMAN
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GENERAL
30 East Broad Street
State Office Tower
Columbus, Ohio
43266

(for Defendant-
Appellant)

CHRISTLEY, P.J.

This case arose from a cancellation of a driver's license. Appellant, Ohio Bureau of Motor Vehicles, contacted appellee, Leonard C. Heckman, on August 20, 1987, notifying him that if he did not obtain a letter of clearance from Pennsylvania, his Ohio driving privileges would be cancelled. On September 22, 1987, appellant notified appellee that his driving privileges and driver license had been cancelled. Appellant further informed appellee if he wished to regain his driving privileges that he must contact appellant. Once again on June 8, 1988, appellant informed appellee that his driver's license was cancelled and that appellee must return his license to appellant.

Then, for reasons not apparent from the record and which were not addressed in the briefs, appellee received from the Ohio Bureau of Motor Vehicles a notice of suspension pursuant to R.C. 4507.30(D) and/or R.C. 4509.77. While R.C. 4509.77 covers a

suspension, R.C. 4507.30(D) pertains to both the suspension and the cancellation of a driver's license. Despite the ambiguity created by a notice of suspension rather than cancellation, the Ohio Bureau of Motor Vehicles files, which were before the trial court, clearly indicated that appellee's driver's license was cancelled indefinitely as of September 22, 1987.

Prior to this suit, appellee filed a petition in municipal court incorrectly titling it "a petition for an order declaring suspension improper," which was subsequently dismissed. Appellee then reapplied on December 22, 1988 for a driver's license, and was told that he could not be issued a license.

On December 30, 1988, appellee again incorrectly petitioned the Niles Municipal Court for an order declaring the suspension of appellee's driver's license to be improper. A hearing was held on January 27, 1989. In both

appellant's motion to dismiss and motion to vacate, appellant informed the court that appellee's license had been cancelled. The trial court continued to exercise jurisdiction and sustained appellee's petition. It lifted the suspension and permitted appellee to apply for an Ohio driver's license. ;

It is from this November 3, 1989 judgment that appellant timely filed its notice of appeal raising the following assignment of error:

"The court below erred in granting judgment for Appellee when he failed to exhaust administrative remedies."

Appellant argues that the municipal court did not have jurisdiction to hear this case; and, therefore, the lower court's decision should be reversed and the decision of the Bureau of Motor Vehicles reinstated. Originally, appellant's license was cancelled pursuant to R.C. 4507.08 (D). In pertinent part, at the time of the proceeding, the

statute stated as follows:

"(D) Any person making an application who holds or has held a current operator's or a chauffeur's license issued to him by another jurisdiction and such license is under revocation or suspension in the jurisdiction where issued, until the expiration of one year after the license was revoked or until the period of suspension ends. Any person whose application is denied under this division may file a petition in the municipal court or county court in whose jurisdiction the person resides agreeing to pay the cost of the proceedings and alleging that the conduct involved in the offense that resulted in suspension or revocation in the foreign jurisdiction would not have resulted in a suspension or revocation had the offense occurred in this state. If the petition is granted, petitioner shall notify the registrar of motor vehicles by a certified copy of the court's findings and a license shall not be denied under this division."

; In order to invoke R.C. 4507.08 (E), formerly R.C. 4507.08(D), an individual must be denied a license due to the revocation or suspension of his driving or registration privileges in another jurisdiction. Since appellee's license was cancelled, the statute

does not apply to the present case.

In Columbus v. Sliker (1986), 30 Ohio App. 3d 74, the Tenth District held that a license which was cancelled pursuant to R.C. 4507.08 was "subject to the provision of R.C. 119.06, which requires a hearing using the procedures specified in R.C. Chapter 119." Id. at 76.

The Sliker court reasoned that R.C. 4507.08(D) provided that any person whose application was denied may file a petition in the appropriate court. On the other hand, as in the case presently before the court, "[t]here [was] no provision in R.C. 4507.08 about the method to be used to cancel a license that was allegedly wrongly issued, as was the intent of the Bureau of Motor Vehicles in this case." Id. at 76. (Emphasis added.) Therefore, in Sliker, the court concluded that R.C. 119.06 applied.

Specifically, the record before us reflected that appellee's license was cancelled, as opposed to denied. The trial court had notice of this in both appellant's motion to dismiss and motion to vacate, as well as in the Bureau's file which was before the trial court. The cancellation as in nature of revocation. As such, the right to appeal the cancellation was governed by R.C. 119.06 and 119.09. Sliker, supra.

Even if appellee did have a judicial remedy available before exhausting his administrative remedies, appellee needed to direct his appeal to the court of common pleas, not municipal court. R.C. 119.12 provides the revocation or suspension of a license may be appealed to the court of common pleas of the county in which the licensee is a resident. Appellee filed in municipal court, not the court of common pleas.

The municipal court was without jurisdiction to hear a challenge to the cancellation of appellee's driver's license. When a party fails to file in a court of proper jurisdiction, the appeal must be dismissed. Zier v. Bureau of Unemployment Compensation (1949), 151 Ohio St. '123; Griffith v. J.C. Penney Co., Inc. (1986), 24 Ohio St. 3d 112. Although appellant did not raise the issue of subject matter jurisdiction before this appeal, the lack of such jurisdiction may be raised at any stage of the proceeding, and cannot be waived. Gates Mills Investment Co. v. Parks (1971), 25 Ohio St. 2d 16; Bomanite Designs, Inc. v. LeBail (Oct. 26, 1990), Lake App. No. 89-L-14-139, unreported at 9.

Despite appellee's attempt to circumvent the procedure by applying for a license, (which was of course denied) he cannot claim a right of appeal under R.C. 4507.08(D) until he clears up the previous cancellation. Once

appellee's license was cancelled, his subsequent applications would be continually denied based on the original cancellation, not the suspension or revocation by a foreign jurisdiction.

Regardless of the notice of suspension which confused the issue, the actual status of appellee's license was cancellation. Presumably, the trial court proceeded with this case under the impression that appellee's license was suspended in another jurisdiction. Despite the trial court's presumption of jurisdiction, the evidence before the court confirmed that appellee was denied a license on December 22, 1988, because the Ohio Bureau of Motor Vehicles had cancelled his license. The reason for that cancellation is irrelevant in terms of the available remedies.

In light of the above, the municipal court was without jurisdiction to entertain appellee's petition. Accordingly, the municipal court's judgment is reversed as

being void and the decision of the Bureau of
Motor Vehicles is reinstated.

JUDITH A. CHRISTLEY
PRESIDING JUDGE

MAHONEY, J., Ret.,
sitting by assignment

BAIRD, J., Ninth Appellate District
sitting by assignment.

concur.

STATE OF OHIO)
) SS:
COUNTY OF TRUMBULL)

IN THE COURT OF APPEALS

ELEVENTH DISTRICT

LEONARD C. HECKMAN,

Plaintiff -
Appellee,

-vs-

JUDGMENT ENTRY

M I C H A E L J .
M c C U L L I O N ,
REGISTRAR, OHIO
BUREAU OF MOTOR
VEHICLES,

CASE NO. 89 T 4328

Defendant -
Appellant.

For the reasons stated in the Opinion of
this Court, the municipal court's judgment is
reversed as being void and the decision of the
Bureau of Motor Vehicles is reinstated.

;
JUDITH A. CHRISTLEY
PRESIDING JUDGE

MAHONEY, J., Ret.,
sitting by assignment

BAIRD, J., Ninth Appellate District
sitting by assignment.

IN THE NILES MUNICIPAL COURT
NILES, OHIO

LEONARD C.	)	CASE NUMBER 88 H 1038
HECKMAN,)	
)	
Plaintiff,	)	<u>JUDGMENT ORDER</u>
)	
-vs-)	
)	
STATE OF OHIO,)	
BUREAU OF MOTOR)	
VEHICLES,)	
)	
Defendant.)	
)	

Appellant filed this appeal pursuant to O.R.C. 4507.08(D). Appellant, in December, 1988 applied for an Ohio drivers license after having held a Pennsylvania drivers license. His application was denied.

The record supplied by the Ohio Bureau of Motor Vehicles in this petition and in a prior appeal that Mr. Heckman had improperly filed do reveal a Pennsylvania Suspension arising from a Judgment, or non-payment of a Judgment Order. If the Judgment had been obtained in Ohio, the Judgment would no longer be valid, but would be dormant. Upon the basis of the

Bureau record presented, the Court sustained the applicant's petition. The Bureau's request to vacate is overruled.

Dated at Niles, Ohio this 3rd day of November, 1989.

J U D G E

Journalized this 3rd day of November, 1989.

Barry L. Profato

Clerk of Courts

By: Deputy Clerk